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# The American Bar Association Journal

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BY THE AMERICAN BAR ASSOCIATION

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# The American Bar Association Journal

VOL. III JANUARY, 1917 No. 1


I.

## ANNOUNCEMENTS.

### PROPOSED AMENDMENT TO BY-LAWS.

The Executive Committee has considered a proposed amendment to the By-Laws, which is herewith presented to the Association with the recommendation that it be ordered printed in the JOURNAL of the Association and that it be referred to the next annual meeting for consideration by the Association.

*Suggested By-Law.*—The Association shall be divided into the following commissions:

I. Jurisprudence and Constitutional Law.
II. Substantive Customary and Statute Law.
III. Remedies and Procedure.
IV. Education and Ethics.
V. International and Comparative Law.

Each commission to be composed of all members of the Association who shall 30 days before the annual meeting notify the Secretary of the Association in writing of their wish to be assigned thereto. No member, however, to be assigned to more than two commissions. After a member is once assigned to a commission further notice from him to be unnecessary unless a change is desired. These commissions to hold separate sessions independently of each other immediately following the opening session of the Association; and to devote themselves to the consideration of questions relevant to their respective divisions. Each commission to have a Chairman and Secretary, nominated by the General Council and elected by the members of the commission present at the annual meeting. Each commission to have the power to appoint special committees to prepare specified material for consideration, or to work out in detail the application of principles agreed upon by the commission, and to report to the commission not later than the next ensuing annual meeting.

The Judicial Section and the Section of Legal Education to be continued, with authority for joint sessions, when desired, of the Judicial Section and Commission III and of the Section of Legal Education and Commission IV.

The committees as now or hereafter constituted to be continued and to report to the appropriate commissions, according to the nature of the subject reported upon.

The sessions of the full Association to be three in number:

(1) The opening session for the customary formal proceedings, reception of reports of administrative officers, and announcements of commission and section meetings.

(2) A business session solely for action on administrative reports, election of officers, and miscellaneous business.

(3) A deliberative session, with such adjournments as may be found necessary, for the consideration of reports of the several commissions and sections.

## ACCEPTANCE BY STATE BAR ASSOCIATIONS OF CONSTITUTIONAL PROVISIONS OF AMERICAN BAR ASSOCIATION.

On September 23, 1916, the Secretary, in a letter to the President and Secretary of each state Bar association called attention to the amendments recently made to the Constitution of the Association, which read as follows:

"The President of each state Bar association recognized by this Association, which accepts this provision, shall become a member *ex-officio* of the General Council, provided he be a member of the American Bar Association, and provided further that votes in the General Council be by states whenever a roll call is asked.

"The Secretary of each state Bar association recognized by this Association, which accepts this provision, shall become a member *ex-officio* of the Local Council for such state, provided he be a member of the American Bar Association."

The request was made that this matter be brought before the various state bar associations and that the Secretary be advised of any action thereon.

At this writing ten associations have accepted the provisions, viz.: Colorado, District of Columbia, Illinois, Indiana, Massachusetts, Minnesota, Missouri, New York, Ohio and Rhode Island.

A number of state associations do not convene until spring or early summer, and are holding the matter for presentation to the respective associations at that time.

Twenty-two associations have sent no response to the communication.

## FOR ATTENTION OF VICE-PRESIDENTS AND GENERAL COUNCIL.

The Vice-President and members of the General Council from each state will please note that in accordance with By-Law XII of the Constitution, it is their duty to endeavor to procure the enactment by state legislatures of the acts approved by the Association. The Secretary calls attention to

The Uniform Land Registration Act (Torrens Act), and

The Uniform Probate of Wills Act,

prepared by the National Conference of Commissioners on Uniform State Laws, and reported to the Association at the Chicago meeting by the Committee on Uniform State Laws. The Association adopted a resolution approving these acts and recommending them for adoption by the various states.

Drafts of the acts will be found in the July JOURNAL, pp. 669-707; additional copies may be had on application to the Secretary.

## RESOLUTION OF THE BAR ASSOCIATION OF TENNESSEE.

At a recent meeting of the Bar Association of Tennessee, held in the City of Memphis, the following resolution was unanimously adopted:

"*Be it Resolved,* That the Tennessee Bar Association congratulates the American Bar Association on the work it has done in formulating and procuring the enactment of uniform laws, and that the Tennessee Bar Association hereby tenders its support to secure the adoption by the Tennessee Legislature of such uniform laws as may be recommended by the American Bar Association, and that a copy of this resolution be sent to the Secretary of the American Bar Association."

## PRESIDENT ROOT'S ADDRESS.

The Secretary still has on hand a few copies of the address, "Public Service by the Bar," delivered by President Elihu Root, at Chicago, August 30, 1916, which will be sent to members of the Association upon application.

## CANONS OF ETHICS.

The Canons of Ethics of the American Bar Association will be furnished free of cost on application to the Secretary.

## BINDING VOL. II OF THE JOURNAL.

The Lord Baltimore Press is prepared to bind Vol. II, of THE AMERICAN BAR ASSOCIATION JOURNAL, supplying title page, in color and style similar to that of the Annual Reports, at a cost of $1.50 per volume. Members desiring to have the four numbers of the 1916 JOURNAL bound in one volume can communicate directly with The Lord Baltimore Press, Greenmount Avenue and Oliver Street, Baltimore, Md.

## REQUEST TO MEMBERS.

Members of the Association are requested to advise the Secretary immediately of any change in address; this will insure delivery of all mail matter.

## REQUEST TO VICE-PRESIDENTS.

Vice-Presidents are requested to notify the Secretary promptly of the death of any member of the Association from their respective states; the Secretary has no other source of information, except the Postoffice Department, and desires for the sake of absolute accuracy to get authentic information.

## HON. MICHEL MATHIEU.

The Secretary is advised of the death, on July 30, 1916, of Hon. Michel Mathieu, Montreal, Canada, an honorary member of the Association.

## BOOKS RECEIVED.

Acknowledgment is made of the receipt by the Secretary of the following books:

Proceedings of the Bar Association of Tennessee, 1916.

Decennial Anniversary Brochure of the Far Eastern Bar Association.

Ezra Ripley Thayer, An Estimate of His Work as Dean of Harvard Law School.

Proceedings in the Supreme Court of Kansas, in memory of Alfred W. Benson.

Annual Proceedings of the Bar Association of the State of Kansas (1916).

Reports of State Bar Association of Wisconsin, Vol. II.

South America—Study Suggestions, by Harry Erwin Bard.

Year Book, 1916, Carnegie Endowment of International Peace.

Transactions of the Twenty-third Annual Meeting of the South Carolina Bar Association.

Volume 39, 1916, Reports of Alabama State Bar Association.

Year Book, New Jersey State Bar Association, 1916-17.

Bulletins of the American Association of University Professors.

Minutes of the New Mexico Bar Association, Thirtieth Annual Session, 1916.

## MEETINGS OF STATE BAR ASSOCIATIONS IN 1917.

THE WYOMING STATE BAR ASSOCIATION will meet January 15 and 16.

THE BAR ASSOCIATION OF THE STATE OF KANSAS will meet in Topeka, January 30-31.

The annual meeting of the BAR ASSOCIATION OF CONNECTICUT will be held in Hartford in January.

The twelfth annual meeting of the MISSISSIPPI STATE BAR ASSOCIATION will be held at Greenville on Wednesday, May 2.

THE BAR ASSOCIATION OF ARKANSAS will meet probably in Little Rock on Tuesday and Wednesday, May 29 and 30.

THE COLORADO BAR ASSOCIATION will meet at Colorado Springs on July 6.

THE SOUTH DAKOTA BAR ASSOCIATION will meet at Sioux Falls, July 18, 19 and 20.

THE BAR ASSOCIATION OF HAWAII will hold a quarterly meeting on February 28. The annual meeting of the association will be held on May 30. Both of these meetings will take place at Honolulu.

THE NEW MEXICO BAR ASSOCIATION will meet in Roswell during October.

## II.

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## III.

## THE FOUR-YEAR LAW COURSE.

### ANNOUNCEMENT BY THE DEAN OF THE FACULTY OF LAW OF NORTHWESTERN UNIVERSITY.

On behalf of Northwestern University, I desire to make announcement of action taken recently to increase the requirements of this Law School, effective from September 1, 1918, as follows:

For the degree of LL. B. or J. D. a course of legal studies amounting to *four years* of time and *eighty-eight semester hours* of credit (instead of three years and seventy semester hours) will be required; except that holders of an A. B. or B. S. degree may, on certain conditions, complete the course in three years.

For admission, a *three-year* course (instead of one year) of collegiate studies will be required; except that persons not so qualified may, on certain conditions, enter as candidates for the LL. B., but not more than ten in each year.

The first of these measures, the four-year law course, was enacted to conform to the spirit of the resolution unanimously adopted, at the recent meeting of the American Bar Association, by the Section of Legal Education and of Bar Examiners, in joint session upon the Model Rules for Admission to the Bar, declaring that "all applicants, after being educationally qualified, should be compelled to study law for four years," the fourth year to be spent either in a law school or in a registered clerkship.

Northwestern University Law School appears to be the first school thus far to take action under the above resolution. But others are doubtless ready to take the same step; for of the sixty or so members present at the above session, some forty were professors of law, representing some twenty schools, and the vote was unanimous, after a long and thorough debate. It will be remembered that the measure was first proposed to the Section by the New York State Board of Bar Examiners in 1914.

In the belief that the measure is one of widespread interest, and merits support by the press, some further information is enclosed herewith.

Respectfully yours,

DEAN OF THE FACULTY OF LAW.

EDITORIAL (BY DEAN JOHN H. WIGMORE) IN THE DECEMBER 1916 NUMBER OF THE ILLINOIS LAW REVIEW.

Senator Elihu Root, at the meeting of the American Bar Association in August last, devoted his presidential address to "The Call of the Bar to Public Service," and as a main remedy for the imperfections of our system of justice he emphasized the need of a broader and more comprehensive legal education.

The Section of Legal Education (of the American Bar Association), in joint session with the state boards of bar examiners, also in August last, voted unanimously to adopt Rule XI of the Model Rules for Admission to the Bar, requiring four years of preparation for all applicants, of which the first three years must be, and the fourth year may be, spent in a law school.

Northwestern University, in this November, by successive votes of the faculty of law, the university council, and the board of trustees, prescribes four years of law studies (eighty-eight units) for the law degree; the rule to be effective from September, 1918.

The President of the Association of American Law Schools, Professor Walter W. Cook, of Yale University (formerly of the University of Chicago), in his presidential address at the annual meeting on December 28, will recommend that four years of law school studies be required for the law degree.

These four events, coming in rapid succession, mark the culminating moment of long maturing convictions, which have rendered the new step inevitable. They will focus the attention of the law school world on this new measure; and they point to its speedy and general acceptance.

The measure is neither local nor radical. It is merely a necessary result of changed conditions universally recognized as requiring more extensive preparation in the professional or applied sciences. A fifth year of work for the medical degree is now in course of adoption; and a fourth year in law preparation is the corresponding step. Ten years ago the French faculties of law debated and favored the requirement of a fourth year; and only the increased burden of military service prevented the adoption of the rule. Nearly twenty years ago the German faculties of law voted in favor of the principle; for at least the same period Bavaria and Württemberg have required four years; and in 1902 the Prussian Government attempted, though unsuccessfully, to

lengthen the university periods to three and one-half years. Austria has for a still longer time been on the four-year basis. All of the German countries now require three or four years of apprenticeship in practice, additionally.

Of the numerous considerations to which such a proposal gives rise, let us here notice a few only.

1. *Can the modern demand for instruction of the new generation in jurisprudence, legislation, criminology, and other broadening fields of legal science, be met by an optional fourth year only?*

Many of us had faith that it could be so met. But that faith is now proved utterly groundless. An experiment on the most apt scale has furnished that proof. Harvard University has had for many years more than 700 students in its law school, and the prestige of that university has made its student body representative of the most ambitious young men, from all over the country, destined for the legal profession. To this representative body has been offered an optional fourth year, for a period of five years past. In that period the average number of men taking the fourth year has been *less than 1 per cent* of the total body. Moreover, it has also retained less than 1 per cent of each graduating class; for almost all the fourth-year students were graduates or professors from other law schools, and not regular members of the third-year class staying over for a fourth year.

A few other schools have been offering an optional fourth year. But the experience of Harvard University is sufficient as a basis of observation, because the conditions were there most favorable for the experiment.

What does this prove? It proves that the *optional* fourth year is a failure, in so far as it might be expected to effect any impression on an appreciable fraction of the body of new lawyers.

It follows that, if the group of studies in question is deemed to be necessary for *all* of the best young men now entering the Bar, the fourth year must be *required*, and not be left optional.

That it is necessary for *all* of the ambitious and aspiring young men, we now maintain. No one, to be sure, need expect to impose on the whole of the new generation the highest and broadest training. There will always be, in this country of ours, different diets for different digestions. There are still today more two-year

schools than there are three-year schools; or, if one desires to put it so, more schools of inferior than of superior grade. The latter put forth their standards as meet for those who desire the best preparation. These three-year schools must now become four-year schools; and the others will then become three-year schools. The cleavage will probably always remain. But in those schools which have convictions as to the requirements of the best standards, there is no reason why they should be satisfied to see those standards applied to only 1 per cent of even the aspiring class of students. *All* of the clientage of those schools should be brought to the test of those standards. The difference between the best prepared and the less well prepared should be represented, as heretofore, not by a variance within the clientage of a particular school, but by the cleavage between one group of schools and the other group.

In short, then, the optional fourth year will never succeed in producing any appreciable effect on the best group of new lawyers. They can be reached, as a group, only by making the fourth year a required one. If we are regardful of practical influence upon the Bar, we must wish to see a large proportion, and not merely a minute handful of them, subjected to the best preparation.

2. *Does the four-year law course involve too great a burden, in that it would require extensive additions to the staff in the faculties of law?*

We believe not. And the reason is a very simple one: In many or most of the schools in the Association of American Law Schools the curriculum is already so overloaded, beyond the capacity of even the most industrious students, that a mere expansion of the present curriculum, accordion-like, will provide a four-year curriculum which would still contain more than any student can hope to complete.

This aspect was carefully studied by the authorities of Northwestern University; and the data presented by their experience may therefore serve as an illustration. Other schools' experience would probably tally closely.

The courses in the present curriculum figured up a total of 141 units (by the semester-hour reckoning). This included several subjects, added in the last few years, of the kind needed for the new demands of the time. Some of the courses had hitherto

been grouped as a recommended optional fourth year; but all were scheduled in the three-year curriculum and were actually pursued by students in varying numbers. The total represented the range of studies which by today's standards ought to have a place in the training of the aspirant.

The three-year course called for 68 units for graduation (since 1915, 70 units), *i. e.*, slightly more than an average of 11 week-hours per semester. Now the records of actual attainment showed that the highest number of units of credit secured by members of the last two graduating classes were as follows:

- *Highest marks in quality* (A only) ..... = 83 units
- *Second highest marks in quality* (A only) ..... = 79 units
- *Highest marks in quantity* (A and B) ..... = 88 units
- *Average good marks in quantity* =
  - 80-88 units (1/6 of the class)
  - 75-79 units (2/6 of the class)
  - 68-74 units (3/6 of the class)

The latter reckoning represented those students who had sought quantity rather than quality; the former represented those who had concentrated on quality. But the net result showed that even the most industrious students, in a three-year course requiring a number of units equal to about one-half of the offered curriculum, *were unable to cover additionally more than one-fifth of that one-half.* In other words, if the requirement were to be enlarged to four years and 88 or 90 units, the most industrious students could probably not cover more than 105-108 units, or less than four-fifths of the present offered curriculum. Thus, even without any enlargement at all of the present curriculum, the four-year course would still leave it impossible for even the best students to cover all that is already offered as useful for their training.

This seems to show that no additions to a staff are required, merely for the sake of a four-year course. And the truth is that in almost all schools of the best grade the curriculum has gradually reached such a state of congestion that its distribution over four years could be accomplished without any additions for the purpose.

Indeed, we believe that in most schools today many subjects have even been deliberately kept out, though deemed highly meritorious for inclusion, because of the apparent futility of attempt-

ing to insert them in an already overcrowded list. We remember that at the last meeting of the Association of Law Schools, at the symposium upon courses in legislation, the first and only doubting question asked of the principal speaker was, How could room possibly be found for that subject in a three-year curriculum? Each school can tell the tale of subjects clamoring for admission or expansion, but excluded for lack of room.

One of the greatest benefits, therefore, of the four-year course will be to permit expansion in many concededly needful directions hitherto made impracticable by the three-year limitation.

3. *How shall the curriculum be distributed over four years?* Two kinds of subjects will naturally compete for a special place in the fourth year—courses in procedure and practice, and courses in that newer field which (for lack of an accepted term) may be called legal science.

The former type of courses represents the demand of the Bar examiner for better training in various aspects of procedure. No doubt the law office alone can furnish some things. But we are convinced that the law school can furnish most of what is needful with greater economy. And it must be remembered (as several speakers pointed out at the August meeting of the Section of Legal Education) that in the small-town regions, and even in many large cities, young graduates can obtain no place as law clerks or apprentices. Thus the task is thrust upon the schools. Here is where the Legal Aid Clinic can be put to best service. There are now some forty such societies; and the number rapidly increases; if they are brought into union with the local law schools, they can be made to supply the benefits of an office-apprenticeship most effectively. Such work under law school control could be reckoned as a minor part of the fourth year—just as an interneship in an approved hospital is credited on the fifth medical year.

The group of courses in legal science will naturally furnish some part of the fourth-year work. But to place them all there (as has usually been done with the optional fourth year) would be a mistake. These courses call for a graded series, as others do. Their best value can be attained only by introducing some of them in the second and the third years. In the new curriculum of Northwestern University, for example, Roman law is offered in the second year, as a subject which furnishes constant material

for comparison in later courses in jurisprudence, evolution of law, and comparative law. So, too, courses in legislation obviously lend themselves to grading.

Moreover, some of the orthodox subjects of long standing, such as private corporations, municipal corporations, and federal jurisdiction, can now with advantage be relegated to the fourth year, because constitutional law, as a precedent third-year course, supplies many principles which hedge about the others and assists in mastering their materials. And the same is true of certain courses in procedure and in local law.

In short, a correct use of the four-year course would seem to involve a recasting of the entire curriculum, with a view to a regradation of the several series wherever desirable. The educational relief that will come from the removal of the arbitrary procrustean limits of the three-year schedule is remarkable.

From all points of view, therefore, whether of science, of professional needs, or of practicability, the four-year course seems to have everything in its favor and nothing to prevent it. If it is the mark of a new era in our legal education, it is also in entire harmony with the inevitable requirements of the times and with the general trend of professional education in this country and elsewhere.

JOHN H. WIGMORE.

## IV.

## COMMERCIAL ARBITRATION IN ENGLAND.

**Introduction and Abstract of Report by**

**SAMUEL ROSENBAUM, L. L. M. (U. OF PA.),**

**Of the Philadelphia Bar. Published as Bulletin XII of the American Judicature Society, October, 1916.**

### INTRODUCTION.

Publication of the accompanying report on Arbitration was prompted by steps taken in the current year by the Chicago Association of Credit Men to encourage commercial arbitration by establishing a permanent bureau. The author, Mr. Samuel Rosenbaum, devoted seven months in 1915 to study of the subject in London. It is believed that his report will answer all of the queries arising in the mind of an American lawyer or business man.

Mr. Rosenbaum was invited to assist a special committee of the Chicago Association of Credit Men in formulating rules, and his services were given for this work by the American Judicature Society. The rules are published in this bulletin as an appendix.

In an address at the annual meeting of Credit Men, Mr. Rosenbaum explained that the greatest drawback to the success of arbitration in England lies in the fact that the rules generally in force there contemplate decisions on points of law as well as on facts. The man qualified by business experience to act as arbitrator in disputes arising in a particular trade has no special qualification to pass upon points of law. This difficulty is met in a measure by the selection of barristers as arbitrators, and a class of lawyers specializing in such work has been called into being. Something of economy and efficiency is lost by this division of the field. It was shown that the ideal procedure would be submission of questions of fact to the trade expert as arbitrator, and submission of points of law, should there be any, to a court having judges experienced in commercial law.

Thereupon Chief Justice Olson, of the Municipal Court of Chicago, informed the Credit Men that he would establish an

Arbitration branch court and assign thereto a specially qualified judge to pass upon questions of law. The rules were framed to permit of prompt co-operation between arbitrators and the judge of the Arbitration branch court.

This improvement upon English practice illustrates the opportunity now existing for getting commercial arbitration established in the United States upon a correct basis. What is most needed at this time is full information concerning the history and success of arbitration in other countries. The study of arbitration in England herewith presented affords a wealth of data which needs to be digested by American business men and lawyers.

The ready co-operation of courts with the trade world is to be presumed once the need is appreciated. By virtue of the powers conferred upon the administrative head of the Municipal Court of Chicago he was able to assure such co-operation forthwith. The act creating this court gives its chief justice power to establish such special branches as may be needed and to assign to them any of the 30 judges of the court.

This is only another demonstration of the value of large administrative powers conferred upon a reasonable judicial manager, already demonstrated by the creation of numerous other specialized courts. It is only a matter of time when there will be in every city, as there are already in several, such an organized court with a judicial manager of adequate powers.

It is easy to understand the success of arbitration so far as it involves adjudication of disputed facts in commercial transactions. The procedure of the formal court with judge and jury cannot permit of successful competition in this field.

1. The jury is necessarily uninformed as to the technical questions involved, usually those of quality and condition of wares. It is hardly possible to educate a jury sufficiently in a particular cause and such education is slow and costly.

2. The common law powers of the jury, in most American states, are greatly abridged, thus limiting the opportunity for an experienced judge to overcome the inexperience of jurors.

3. We cannot get away from the jury even in commercial causes, and in the cases when no jury is demanded, the judge, however versed in commercial law, cannot be equal to the expert lay arbitrator who has spent a long career in a narrow and technical field.

4. The business of the court must be conducted in formal manner, with only limited reference to the convenience of litigants. Causes must take their turn on the calendar and even in courts which are quite abreast of their work—overlooking the fact that such courts are almost unknown in American cities—there cannot possibly be such flexibility with reference to holding of sessions as when lay arbitrators preside. The successful employment of arbitration on any considerable scale permits of the creation of temporary commercial tribunals on short notice in scores of places, expanding or contracting in number to accord with the volume of business. Such a practice goes far to relieve the courts from work which they cannot do economically and permits them to concentrate upon classes of causes in which they are indispensable. The necessity for the organized court to conserve its energies is sufficient warrant for the expectation that such courts will welcome the introduction of commercial arbitration.

One of the reasons for the slow progress made by arbitration in this country lies in the reluctance of commercial lawyers to submit points of law to lay arbitrators. It is believed, therefore, that the machinery now devised for having such points determined in court will meet this objection and afford eventually a better method of arbitration than that employed abroad. The plan combines the ideal method for determining questions of fact with a standard procedure for deciding points of law.

The worth of commercial arbitration is not to be questioned in view of its remarkable growth in England, a growth made in the face of prejudice on the part of many judges and lawyers. For a long time, if not recently, arbitration was looked upon as a competitor to courts and formal procedure. The courts sought to guard their traditional prerogative and monopoly to the extent of creating a special branch tribunal with informal procedure. A larger view of the entire situation warrants the belief that arbitration is a modern device of the world of commerce come into being to supplement the courts, rather than to compete with them.

New ways of living and transacting business imply new machinery in the law. Society is constantly devising new tools to accomplish its work more economically. Commercial disputes, aside from their technical nature, are different in an essential way. In the law the rendering of exact justice in the matter presented

is a final aim. But in business the settlement of a given dispute is not the most important thing. The big thing is the relationship between the parties. In its formal tribunals the law must ignore this preservation of relations between the parties, however momentous.

The essential difference appears to be that compulsion is the central feature of judicial procedure, while mutuality and voluntary submission underlie arbitration, giving it validity and affording a basis for successful continuance of business relations. Arbitration is thus seen as a constructive social function weaving into the fabric of commercial life to strengthen rather than sever its threads.

There are difficulties enough in the way of general adoption of the idea in this country and it must be admitted that it cannot be done in a day or a year. We must have a more intensive organization of industry to afford the right soil for its growth. It will take time to gain recognition for experts in many lines of trade.

Some encouragement may be derived from consideration of the fact that economic pressure is all on the side of simple, flexible, voluntary methods of adjudication. With the courts left in control of points of law they have much to gain and nothing to lose by the spread of arbitration.

There is also the encouraging fact that we have now a great volume of irregular arbitration expressed through the adjustment of disputes directly by business men and through their counsel. Every lawyer's office is an unofficial court of arbitration. To present universal fear of litigation, with its slow and costly procedure and interminable appeals, is a principal reason for this irregular method of reaching a settlement—for it ought not to be dignified by the name of arbitration. Its fault is not merely that of inexpertness but that it is dominated by compulsion, not by mutuality. Arbitration is the means by which this growing function is to be methodized and regulated in a public manner. It should be viewed, not as hostile to courts but as a special method of adjudication adapted to certain modern needs, a new arm of the law supplementing courts in a practical way.

HERBERT HARLEY,
*Secretary, American Judicature Society.*

ABSTRACT OF THE REPORT.

A very large proportion of the business disputes of England never come into the courts at all, but are adjusted by tribunals established within the various trade associations and exchanges. This is especially true of the vast wholesale distributing trades which are responsible for a great part of the immense volume of imports and exports constantly flowing through the ports of England and giving them the commanding position they occupy towards the sea-borne trade of the world. Disputes over the quality and condition of consignments of grain, cotton, sugar, coffee, fruit, rubber, timber, meats, hides, seeds, fibers, fats, and countless other articles of commerce, as well as every conceivable variety of dispute that can arise out of a contract for sale and delivery, such as questions of delays, quantities, freights interpretations, etc.—all these are passed upon by business arbitrators selected by reason of their familiarity with the customs of the trade and with the technical facts involved, and not submitted to juries whose ignorance would usually be equally comprehensive.

So firmly established is the custom of arbitration in these lines that every contract-form used by shippers, brokers, buyers and users of these articles contains a clause binding the parties to submit to arbitration any dispute that might arise out of the contract. But it is not these trades alone that resort to arbitration. The arbitration clause will be found in every charter-party for the hire of a ship, in every bill of lading for goods carried by sea, in every salvage agreement, in every policy of marine, accident or fire insurance, in every building contract, in every engineering contract whether mechanical, electrical or gas, in every lease of property, in every partnership or agency agreement, and in innumerable other forms of contract. Finally, there is a well confirmed tradition among business men, even though there is no written contract covering a particular dispute, to submit differences to arbitration after they have arisen.

By the Law of England an agreement to arbitrate is enforceable, for the courts will refuse to entertain a suit brought by a party to such an agreement, and the pleading of the agreement will defeat any action brought on the contract. The parties are bound to arbitrate. Further pressure is brought to bear on persons unwilling to arbitrate, but the trade associations, which will suspend

their privileges from members who do not submit to the rules for arbitration.

In some associations there is an Arbitration Committee before whom the hearings are held in the first instance; others require the parties to name their own arbitrators (either one or two or three), but provide a Committee of Appeal of the association which will hear appeals from the awards of arbitrators; some publish lists of arbitrators, naming their fields of special knowledge, for the guidance of intending parties to arbitrations. In many cases lawyers are selected to sit as arbitrators, either alone or together with business men.

A very strong feature is that in any case the arbitrators may obtain the opinion of a court of law upon any legal question arising in the course of the proceeding which they feel must be decided before they can properly dispose of the case completely. The arbitrators will submit to the court a statement of so much of the facts necessary to raise the point in question; the point will be decided by the court, and the arbitrators are then bound to use that decision in coming to their final conclusion. Again, the arbitrators may be able to agree on all the actual facts in the case and determine them completely; they may then state their award in the form of a complete statement of the facts, asking the court to apply the law thereto just as it would on a verdict found by a jury.

When this method is pursued arbitration affords the ideal form of procedure. A judge is handicapped in hearing a trade dispute by his lack of technical information; a commercial arbitrator, though he has not the same capacity for weighing and sifting evidence as a trained judge, knows instinctively what the usages and course of his particular business require. On the other hand, the layman should not attempt to decide questions which are purely on the law: after finding the actual facts as they are, he should turn them over to the court for the application of the law.

The advantages of arbitration over litigation are therefore mainly to be found in the intelligent decision of questions of fact. In addition to this one must consider (1) that arbitration is more convenient, because the hearings can be fixed to suit the convenience of business men so that they need not waste time waiting in court-rooms; (2) it is more expeditious as a case can be finished

in a few days if necessary; (3) it avoids irritation, as there is no publicity, and no such staging of a trial as in an open court where the parties face each other like enemies. But it must not be supposed that arbitration is necessarily cheaper than law suits; in the average case it will not be cheaper in actual expenditure, although the saving of time and friendship and the satisfaction of an expert decision are worth much.

Trial by jury seems to be so firmly imbedded in our American court procedure that it seems hopeless to look to our legislatures for the establishment of any commercial tribunals embodying the features here set forth, and it must be left to the resourcefulness of American business men to find a way to utilize for the settlement of disputes the knowledge, experience and sense of fairness that can be found among them.

SAMUEL ROSENBAUM.

## V.

## ARBITRATION AND CONCILIATION IN NEW YORK.

**EXTRACTS FROM THE REPORT OF THE COMMITTEE ON PREVENTION OF UNNECESSARY LITIGATION OF THE NEW YORK STATE BAR ASSOCIATION, JANUARY 14, 15, 1916.**

*To the New York State Bar Association:*

* * * * * * * * * * *

Your committee has fully considered the various suggestions relating to the settlement of disputes out of court, including arbitration and conciliation. Perhaps the most important communication bearing on that subject (and also on the education of the public to co-operate with the legal profession in the prevention of unnecessary litigation) comes from the Committee on Arbitration of the New York Chamber of Commerce with full authority from that body. That communication is hereto annexed and forms Exhibit "A" of this report. It contains two suggestions requiring the consideration of this Association.

* * * * * * * * * * *

Your committee is highly gratified by the hearty co-operation of lawyers and laymen in the endeavor of this Association to prevent unnecessary strife and litigation. Besides the New York Chamber of Commerce, the New York Stock Exchange, the New York Consolidated Stock Exchange, the Brooklyn Real Estate Exchange, the National Jewelers' Board of Trade and other exchanges and commercial bodies have indicated their approval of or desire to co-operate with the New York State Bar Association in its effort to prevent unnecessary litigation.

Your committee therefore recommends:

1. That the work of this committee be continued another year.

2. That this committee be instructed to join with the committee of the New York Chamber of Commerce in the preparation of a few simple rules for the guidance of laymen in the prevention of unnecessary litigation, and that the same be reported back to this Association for its approval, and

3. That this committee be instructed to report to this Association for its consideration at the next annual meeting a proposed plan for arbitration within the profession which it shall deem practicable for lawyers to recommend to clients wishing to settle their disputes by arbitration.

Respectfully submitted,

DANIEL S. REMSEN, *Chairman,*
JULIAN T. DAVIES,
JOHN BROOKS LEAVITT,
WILLIS E. HEATON,
WARNICK J. KERNAN,
*Committee on the Prevention of Unnecessary Litigation.*

*December 15, 1915.*

## EXHIBIT "A."

CHAMBER OF COMMERCE OF THE STATE OF NEW YORK,

FOUNDED APRIL 5, 1768.

**Seth Low, President.**

**Vice-Presidents,**

| | |
|---|---|
| **William D. Sloane,** | **J. Pierpont Morgan,** |
| **A. Foster Higgins,** | **Jacob H. Schiff,** |
| **James Talcott,** | **George B. Cortelyou,** |
| **John I. Waterbury,** | **James G. Cannon,** |
| **T. DeWitt Cuyler,** | **Anton A. Raven,** |
| **Frank K. Sturgis,** | **William Skinner,** |

**Chas. T. Gwynne, Ass't. Secretary.**
**William H. Porter, Treasurer.**
**Eugenius H. Outerbridge, Chairman of Executive Committee.**

65 LIBERTY ST., NEW YORK, Oct. 6, 1915.

*Mr. Daniel S. Remsen, Chairman of the Committee on the Prevention of Unnecessary Litigation of the New York State Bar Association, New York City:*

DEAR SIR: As a result of our correspondence and conferences the Committee of Arbitration of the Chamber of Commerce of the State of New York on May 6, 1915, incorporated into its annual report to the Chamber the following paragraph:

"The New York State Bar Association has appointed a Committee on Prevention of Unnecessary Litigation. The preliminary report was presented at the meeting of the Association last January, and in part adopted, and the committee continued for another year in further consideration of the subject. The Chamber has been asked to co-operate with this committee of the Bar Association; and as this is directly in line with the spirit of our arbitration system, your committee will, unless the Chamber otherwise directs, co-operate with the Bar Association Committee so far as seems practical."

The unanimous vote of the Chamber approving that report enables our committee officially to co-operate with your Association.

The New York State Bar Association is to be commended by the business and professional world for its efforts in the prevention of strife.

"Prevention of Unnecessary Litigation" is a broad platform on which all honorable lawyers and laymen can stand. It embraces the doctrine of good will and elimination of waste in time and expense, to say nothing of the trouble and inconvenience that may be avoided. It is an effort among lawyers worthy of the honorable traditions of the profession. It exemplifies the fact which is too often overlooked, that the true character of the lawyer should be that of an aid to prosperity as well as a friend in adversity.

The most successful business men are today more than ever recognizing that fact. They are taking measures, not heretofore thought of, to prevent disputes at their source; they are recognizing that prevention is more effective than cure. That attitude of mind is certain to create a greater demand for better and more carefully drawn legal documents. With greater confidence and better understanding between the layman and the lawyer, the latter's office will become a necessary and welcome part of the business man's work. It is certain to result in laymen consulting counsel more freely before the facts upon which a dispute can arise become fixed.

In our opinion a great opportunity is at hand for co-operative usefulness between commercial organizations and the legal profession. We, therefore, wish to make two suggestions which we trust will have your approval: The first is that our respective

committees agree upon a few simple rules for the guidance of laymen in the prevention of unnecessary litigation, to be reported to our respective organizations for approval, and when approved by both, to be jointly promulgated. With so important a professional and business stamp upon them they without doubt would be readily accepted by the layman as wise and practical rules of conduct.

The second suggestion follows. Part II of your report, which remains for consideration at your next annual meeting, particularly concerns the betterment of remedial measures. This fact enables us to present to you our views on arbitration as a means of settling disputes without litigation and to suggest that the New York State Bar Association establish under its auspices a system of arbitration, whereby lawyers shall act as arbitrators for the settlement of disputes among clients, somewhat on the lines of the method now employed by our Chamber of Commerce.

The results obtained by our system of arbitration have proved satisfactory both to lawyers and their clients who have had occasion to test its efficiency. We believe a similar system operated by lawyers of the highest standing would be productive of much public good and prevent much unnecessary litigation.

The following is a general outline of our system:

We have established an "Official List" of Arbitrators, which consists of some two hundred members of the Chamber classified according to their business, who have consented to act when called upon. This list is furnished to parties in dispute so that they may select arbitrators from it; the method of selection provides men of technical knowledge as arbitrators and often reduces the necessity of calling expert witnesses.

Your "Official List" of Arbitrators would probably be classified according to various branches of the law, such as Corporations, Real Estate, Insolvency, Patents, Wills, etc. A lawyer deciding that his client's interests would best be served by arbitration could avail himself of the Bar Association's facilities for arbitration already at hand, instead of those furnished by commercial bodies like the New York Chamber of Commerce. That would be particularly desirable where questions of law are involved. In such cases lawyers are peculiarly fitted to act as arbi-

trators, while laymen should confine themselves to passing on questions of fact.

Arbitrations as carried on by the Chamber of Commerce are based upon written submissions as provided in the Code of Civil Procedure, and are regulated by the by-laws of the Chamber and the rules and regulations of its Committee on Arbitration. The facilities of our system of arbitration are available to non-members as well as members of the Chamber and to citizens of this or any other state or country for the adjustment of ordinary business differences involving only questions of fact.

Arbitration is carried on either by a single arbitrator selected from the official list or by three arbitrators, two of whom are not necessarily members of the Chamber. The third, however, under our rules, must be selected from the official list by the two arbitrators chosen by the respective opposing parties. In some exceptional and important cases the Committee on Arbitration, as a whole, sits in arbitration.

The fees are ten dollars a day or part thereof to each arbitrator. These and the stenographer's fees are the only expenses of the arbitration. The arbitrators decide who are to pay them. Each party pays his own witnesses.

Our procedure is simple. There is as little formality as is consistent with the seriousness of the occasion. Parties appear with or without counsel as seems to them best. The arbitrators have at all times conducted their proceedings in a dignified manner, and disputants have never been lacking in decorum and respect. At no time has an award been questioned. In the main, it has been accepted as satisfactory even by the defeated party.

We recognize that we are not creating precedents. We work on the theory that each case stands on its own merits. While precedents are valuable in courts of law they are necessarily less potent in arbitrations where only questions of fact are involved. Persons who submit their differences to arbitration usually wish their cases tried on the merits of their own contentions and without the formality of a court proceeding.

Through the efforts of our committee many cases are straightened out in a rough and ready "Squire Justice" fashion, wherein ordinary common sense, knowledge of human nature, a clear cut sense of commercial equity, patience and forbearance produce the

results desired, and enables each of the opposing parties to retain the good will of the other. At times during the negotiations, before the submission is formulated, questions of law arise and counsel for the respective parties are called into the conference or the parties are referred back to the law and its remedies. Obviously there are always cases where one of the parties is not honest. In such cases arbitration is never the proper remedy.

To sum up, the following are some of the advantages of the system of arbitration administered under the auspices of the Chamber of Commerce of the State of New York:

1. It saves money.
2. It saves time.
3. It saves trouble—*to the merchant, the law-office and the state.*
4. It supplies technical adjudication, because the disputants can select arbitrators already familiar with the full details—technical and industrial—of the specific business at issue.
5. It is a medium for conciliation. In a trial at court of law the parties meet in a spirit of antagonism. In arbitration we have noted this is lacking. Instead there is usually recognition and appreciation by each side of the other's contention.
6. It assures an absolutely impartial award—one that commands the respect of the disputants, the courts and the legal profession. It establishes commercial equity—applies the rule of reason based on facts, and renders an award that is final and binding, that has the force and effect of a supreme court decision.
7. It admits of the disposal of a dispute sometimes within 24 hours after it arises.
8. It offers the disputants the opportunity to select their own court, judge and jury and to designate the time of trial. Witnesses may be subpœnaed, oaths administered, and the production of books and papers compelled.
9. The number of cases that can be handled simultaneously is almost unlimited.

Our experience with the legal profession has been most satisfactory. Almost without exception lawyers have proved to be of great service both in matters of arbitration and conciliation. They have shown a broad spirit, and we have learned to depend

upon them. Therefore we are desirous of the most hearty co-operation with the legal profession and trust that the New York State Bar Association will see its way clear to inaugurate a system of arbitration among lawyers for the settlement of honest differences among their clients.

While we realize that this suggestion is novel we can see no reason why lawyers whose business is largely the prevention or settlement of disputes should not supplement the machinery of the courts and of commercial bodies by an organized system of arbitration within the profession. In our opinion such action would tend materially to relieve court calendars, prevent unnecessary litigation and increase the confidence and co-operation between the laymen and the legal profession.

I shall be glad to furnish the members of your committee with our printed matter relating to arbitration.

Yours very truly,

(Signed) CHARLES L. BERNHEIMER,
*Chairman Committee on Arbitration.*

P. S. Provision has been made for the distribution of Part I of your report among the members of the Chamber. Recommendations are also being made to other commercial organizations to do likewise.

MINORITY REPORT OF THE COMMITTEE ON THE PREVENTION OF UNNECESSARY LITIGATION.

*To the New York State Bar Association:*

The undersigned member of the Committee for the Prevention of Unnecessary Litigation begs to submit a minority report.

While he concurs in the report of the committee, he believes that it should go further and present certain concrete measures which, if adopted, he believes will result in the lessening of the volume of litigation.

He, therefore, recommends to the Association the passage of the annexed resolutions.

JOHN BROOKS LEAVITT.

*Dated December 24, 1915.*

A.

WHEREAS, Under our present judicial system, the function of the court is to determine litigation by trial of the facts and judgment on the merits; and in many cases litigation could be settled without expense, delay and hazards of a trial, if the parties could be brought to consider just terms of conciliation; and the fact, that if the trial judge attempts the rôle of conciliator he may embarrass himself in the rôle of judge, necessarily operates to deter him from making any sustained effort at conciliation; and it is expedient to learn by actual experiment whether it would be desirable to incorporate the feature of conciliation in our judicial system,

*Resolved*, That the Committee on the Prevention of Unnecessary Litigation be empowered to prepare and present to the legislature a bill authorizing the Appellate Division in the First Department to appoint for one year, upon a salary to be fixed by it in conjunction with the Board of Estimate and Apportionment of the City of New York, an official who shall be known as the Commissioner in Conciliation, to whom any judge of the Supreme Court in the First Department may send the parties in any cause, or before whom any party may summon an adverse party, for the purpose of ascertaining whether a litigation can be settled upon terms that may appear to such commissioner, after due inquiry, to be just and equitable; and that the Appellate Division may prescribe rules of practice in conciliation, and provide the commissioner with necessary clerical assistance, including a stenographer, and may authorize such commissioner to preside at examination of parties and witnesses before trial, with power to rule on the admissibility of evidence, as if the examination were taken before a judge of the court.

B.

WHEREAS, In our sister State of New Jersey there has been in existence for many years a practice, whereby any party to a litigation may require an adverse party to answer specific interrogatories by serving such requirement in writing, and this has proved satisfactory in that state,

*Resolved*, That the committee be empowered to prepare and present to the legislature a bill to establish a similar practice in this state.

These resolutions were, after debate, adopted. (Report of New York State Bar Association, 1916, pages 291 and 309.)

## VI.

## RULES FOR THE PREVENTION OF UNNECESSARY LITIGATION.

### REPORT OF THE JOINT COMMITTEE OF THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK AND OF THE NEW YORK STATE BAR ASSOCIATION.

APPROVED BY THE CHAMBER OF COMMERCE, NOVEMBER 2, 1916.
TO BE ACTED UPON BY THE BAR ASSOCIATION, JANUARY 12, 1917.

### OBJECT OF THE RULES.

It would be impracticable for the Chamber of Commerce of the State of New York and the New York State Bar Association to attempt to lay down rules of law for the guidance of laymen. That would be an attempt to write law books and to make every man his own lawyer. Such a course would be futile. It would promote, rather than prevent, unnecessary legislation.

The attempt here made is simply to put in concrete form a few common sense rules of business which experience has proved to be valuable in the prevention of unnecessary litigation. As litigation and its prevention are peculiarly within the province of the legal profession, these rules necessarily relate, in large measure, to the advice of counsel and to the point at which it is to the interest of the business man to turn to his lawyer for guidance.

These rules are constructed on the theory that prevention is preferable to cure. They contain nothing that is new and much that is necessarily general and commonplace. If they did not represent a common experience, they would be useless. Therefore, in the preparation of these rules, an effort has been made to present recognized business principles in the simplest possible form and even to formulate what may sometimes seem to be self-evident truths. Even if the truths are trite, the fact that they are formulated may serve as a reminder at a critical moment.

### UNNECESSARY LITIGATION DEFINED.

Litigation may be said to be unnecessary if it can be prevented by the exercise of reasonable care. There are three points at which

reasonable care is specially effective. Care at the source is, of course, most effective. After the facts become fixed and before suit, it may or may not prevent litigation. After suit, it may reduce the litigation. These rules are accordingly divided into three parts:

I. Prevention of Litigation at the Source.
II. Prevention of Litigation after the Facts become fixed and before Suit.
III. Prevention of Litigation after Suit.

## Part I.

### PREVENTION OF LITIGATION AT THE SOURCE.

Experience has shown that the point at which unnecessary litigation can be the most easily invited and the most effectually prevented, is at the source; that is, before the facts upon which a dispute can arise become fixed. At that time, the facts are in a formative state and respond to the moulding hand. If one proposed state of facts or set of words is liable to lead to a dispute, another state of facts or set of words can be substituted.

The basis of all litigation is a dispute concerning the facts or the law, or both. Theoretically, the law is a known quantity. Indeed, it is a well settled legal principle that every man is presumed to know the law. It is an equally well settled principle that ignorance of the law is no excuse for the violation of the law. Otherwise law could never be enforced.

Disputes concerning the law as an abstract proposition are of comparatively rare occurrence. The usual dispute concerns the application of the law either to an admitted state of facts or to a disputed state of facts. The latter case is by far the more common. Thus it is that success or failure in litigation usually turns upon the facts.

While the law cannot be changed by individuals the facts are peculiarly within their power. Of course, one cannot change the order of nature, but, within proper limitations, a person has great latitude in determining facts in advance of any dispute. He can so determine the facts that the opportunity for dispute is large or small, depending upon the wisdom with which he has acted. For example, the presence or absence of particular words or phrases in a contract or will is a fact within the power of the makers of

such instruments. If proper words are chosen to fit perfectly all possible contingencies that may arise, there can be no dispute. If the words used do not fit perfectly all possible contingencies that arise, their meaning and legal effect may become disputed questions that require litigation for settlement.

Litigation, in a majority of civil cases, is the offspring of disputes concerning property. If there can be no dispute there can be no litigation.

The world's great instrumentalities for preventing disputes concerning property are two in number. The office of each is much the same and relates to the ownership of property. The first is the creator of wealth and the instrument of trade. It is a mutual agreement between two or more persons and is known as a *contract.* The second relates to the transmission of property after death. It is made by one person, usually in secret, to take effect after death and is known as a *will.*

### Advice of Counsel.

Experience has shown that the key to the prevention of much unnecessary litigation lies in the confidence and co-operation between the laity and the legal profession. That confidence and co-operation necessarily depend upon an intelligent understanding of certain truths peculiarly within the knowledge of the profession. The better those truths are understood the more clearly will the lawyer stand before the public as a constructive force. His true character as an aid to prosperity will be appreciated quite as much as are his remedial powers in case of adversity.

The legal profession is the guardian of peaceful trade during life, and of the orderly transmission of property after death. Like the medical profession, it is distinguished from a business in that its first consideration is the discharge of a trust or duty to another. The advice given or service rendered must not be and, among worthy members of the profession, it is not tainted by a selfish motive.

For the good name of the profession and for the protection of the client, it is the duty of the lawyer to bring to his task good faith and nothing less than ordinary professional skill, care and diligence. A lawyer is not ordinarily required to bring to his task

extraordinary professional attainments, and the client has no right to expect such attainments simply from the fact that his legal adviser holds a license for the practice of law. If he wishes exceptional professional attainments in any line he must seek for them, just as in the medical profession, and must not complain because all lawyers are not equally learned, careful and diligent.

RULE 1. Consult counsel in advance of important undertakings and also when uncertain of any contemplated action.

RULE 2. Remember that the point at which unnecessary litigation can be most easily invited, and also the most easily prevented, is at the source.

RULE 3. Experience has shown that the layman who draws his own legal documents or seeks to have them drawn by a person possessing anything less than ordinary professional skill is inviting unnecessary disputes and litigation.

RULE 4. Remember that the wise choice of a legal adviser is half the battle.

RULE 5. Learn to appreciate the importance of and to demand carefully prepared contracts, wills, and other legal writings.

RULE 6. Learn to regard the lawyer as a constructive force quite as much as the possessor of remedial powers.

RULE 7. Learn to consult counsel freely before the facts upon which a dispute can arise become fixed. If the facts have become fixed, learn to consult counsel before or at the inception of the dispute.

RULE 8. As you consult your banker on financial matters, your credit agency on credit matters, your newspaper on market conditions, so in advance consult your legal adviser on the serious problems of your business.

RULE 9. Remember that if consulted in time, a lawyer can prevent disputes which, later, he may not be able to cure.

RULE 10. Remember that the professional man of the highest standing in law, as in medicine, can often best serve the interests in his keeping by calling in a specialist or one having unusual skill and experience in a particular branch of legal work.

RULE 11. If counsel fails to prevent litigation, remember that it may not be his fault. It may be the fault of his client or the fault of others, or due to the limitations of human nature.

CONTRACTS.

The contract is the world's greatest instrumentality for the prevention of disputes. It is the basis of trade throughout the world. Its office is to bring together the minds of opposing parties. If the contract is perfect, it will so provide for all possible contingencies that during its continuance there shall be no room for dispute as to its meaning. The only dispute which can then arise is as to its performance—whether the act done or thing delivered measures up to the terms of the contract. (See Part II, p. 47.)

As the contract falls short of perfection, the opportunities for dispute multiply both as to the meaning of the contract and as to its performance. Happily, most business transactions are simple. Most business engagements are performed soon after they are made. In such cases there is usually little room for dispute. Where, however, performance is postponed or requires a continuing and unusual course of action, there is greater opportunity for dispute and, consequently, a greater necessity for a careful preparation of the contract.

In making such contracts, experience has shown that it is wise for each party interested to look into the future and to see to it that from his point of view such words are used as will safeguard his interest against all possible contingencies and truly reflect the meeting of the minds of both parties. This necessity of business has led to the employment of counsel in the preparation of important contracts and, finally, to the standardization of many kinds of contracts, such as deeds, mortgages, insurance policies, promissory notes, bills of lading and the like.

These standard contracts are necessary to the transaction of ordinary business and represent the wisdom and experience of ages. Many contracts, however, are not capable of standardization, and these are the contracts that cause the most disputes and litigation.

On the basis of space devoted to each subject, in a standard digest of all reported cases, it seems that of all the litigation in the State of New York concerning non-standardized contracts, about 28 per cent concerns the meaning of the instrument. In contrast with this the percentage of litigation concerning the meaning of standardized contracts, it may be well to note, ranges only from 3 to 7 per cent.

These figures are to be taken as nothing more than approximate; but they are, nevertheless, useful as showing the value of the standardization, or careful preparation, of contracts. They clearly show that uncertainty of meaning is the great breeder of disputes and litigation.

RULE 1. Reduce agreements to writing whenever practicable.

RULE 2. Have clearly in mind the object to be attained and the method of attaining that object.

RULE 3. Seek out all possible contingencies that may arise and consider carefully what may be the consequences of each.

RULE 4. Devise ways and means of meeting those contingencies and their consequences.

RULE 5. Do not enter into important contracts without legal advice.

RULE 6. When counsel is to prepare a legal document tell him everything, or, better still, write the facts without reserve. Withhold no information regarding yourself or the other parties, lest a fact apparently immaterial may prove to be of importance.

RULE 7. Take special care that the language used shall, under all possible circumstances, convey the desired meaning beyond the possibility of a doubt.

RULE 8. If there is the slightest doubt as to the language, do not remain silent but urge your views upon counsel.

RULE 9. Remember that the preparation of such a document may cost in time, thought and money, a little more than slipshod work, but it will be well worth what it costs.

RULE 10. If a legal instrument is submitted for execution, place it in the hands of counsel with instructions to test it in your interest on the lines above mentioned. Read and understand it yourself and give counsel the benefit of your views.

RULE 11. Remember that when a contract is ready for execution it is intended as a record of the meeting of minds, that it is important that the minds of all parties should actually meet and that all should have the same understanding of the terms of the instrument. To this end every precaution should be taken, otherwise the germs of a dispute exist from the signing of the contract.

RULE 12. Remember that contracts entered into by carelessly spoken words or loosely written letters are as dangerous as other ambiguous contracts.

RULE 13. Make careful investigation of the parties with whom you are about to contract before entering into business relations with them

RULE 14. Make no contract that is not beneficial to both parties. If an ambitious and incompetent person is anxious to make a contract which you know he cannot profitably perform, do not take advantage of his ignorance. He probably will not do his part and litigation will follow.

RULE 15. If possible avoid dealing with a person of doubtful character or one in whose good faith you lack confidence. If you must deal with such a person take unusual care that the terms of the contract are clearly stated and understood by all parties.

RULE 16. Carry out all contracts faithfully, accurately and completely.

RULE 17. Keep complete records of all transactions for a reasonable time after they are closed, lest some question should arise in relation thereto.

WILLS.

"The will," says the late Sir Henry Maine, in his work on Ancient Law, is the instrument "which next to the contract has exercised the greatest influence in transforming human society." It is the instrument by which its maker is permitted to prescribe the succession to his property after death. In effect, the instrument becomes a private law for that purpose.

A will differs sharply from a contract since, in its making, no agreement between living persons is required. No person other than the maker has a right to know its contents or to suggest an amendment unless invited to do so. If the will proves to be safe and sound there will be little room for dispute. If not, every defect and uncertainty of meaning will be brought to light after death and will invite family disputes and litigation.

A safe and sound will has two indispensable elements, both of which are within the power of the maker. The first is a wise plan conceived on fair lines and equitable principles, and so perfected as to meet the unknown contingencies of the future in family and estate. The second is a set of words that shall so reflect that plan that no uncertainty of meaning can arise under any possible contingencies of the future. In the absence of either of these ele-

ments, a will may prove a disappointment to those whose interests it is designed to protect.

On the basis of space devoted to each subject in a standard digest of all reported cases in the State of New York, the volume of litigation concerning wills seems to exceed by far that on any other subject before the courts. It also appears that of this great volume of litigation 82 per cent is of a preventable nature, while 70 per cent concerns the meaning of the instrument, and less than 8 per cent concerns mental capacity, fraud and undue influence.

As in the case of contracts, these figures are taken only as approximate; but their comparison with figures relating to non-standardized contracts reveals a remarkable fact. They show that the bulk of litigation concerning wills turns on the meaning of the instrument. They also show that the percentage of preventable litigation concerning wills is about three times as great as the percentage of preventable litigation concerning non-standardized contracts, and from 10 to 23 times as great as the percentage of preventable litigation concerning standardized contracts.

This disparity of percentages is easily explained. In the case of contracts the words used are employed only after they are carefully discussed and approved by parties having adverse interests and usually by their counsel as well. A will, however, is generally made in secret, without outside criticism. The words used are not subjected to the scrutiny of adverse interests until death has made change impossible. Then the only possible remedy is an agreement between the parties in interest, arbitration or legal proceedings.

The reasons for such an extraordinry amount of unnecessary litigation concerning wills are plain. The first is that many persons cling to the absurd idea that the writing of any will does not call for legal talent specially qualified for the work. The second reason lies in the fact that most wills are not tested before death, as is the practice in England. The idea behind such a test is for the maker of a will to assume that he is dead and to discover, by an independent expert examination during his life, what is likely to happen to his will after his death. There is no other possible method of testing a will before death. A judicial test before death is impossible. Even a law for the probate of a will before the death of the maker has been held unconstitutional.

RULE 1. Remember that in the preparation of no legal document is the inaccurate use or location of a word or phrase more serious than in a will.

RULE 2. Remember that the best time to prevent disputes and litigation concerning a will is when the will is made. If, however, a will has been made, remember that it may still be tested before death and its defects and ambiguities discovered and corrected. (See Rule 8 (3).)

RULE 3. Remember that the more entangled one's estate the greater is the necessity for a proper will.

RULE 4. Remember that no layman should attempt to draw a will.

RULE 5. Do not hesitate to give your legal adviser all the facts and state your wishes fully. Without such data he cannot intelligently draw a will to meet your requirements.

RULE 6. Remember that the proper writing of a simple will calls for nothing less than ordinary professional skill and for much more care than an ordinary contract or other legal writing between living persons.

RULE 7. Remember that the writing of a complicated will or one intended to tie up property by trusts or otherwise, calls for legal talent specially qualified for the work.

RULE 8. Remember that the maker of a will can, with reasonable certainty, forestall family discord and prevent wasteful litigation after his death, (1) by planning his will wisely with reference to his family and estate, (2) by having it skilfully prepared and (3) by submitting it to at least one specially qualified legal critic, other than the draftsman, for independent interpretation and constructive criticism. In this manner, a fresh mind specially equipped and working on scientific lines will usually so test a will before death as to discover latent germs of dispute in time for correction.

RULE 9. Remember that undue economy in the preparation of a will often defeats the purpose of its maker.

RULE 10. Remember that it is wise for the maker of a will to examine its contents occasionally, particularly if the will is stale or does not automatically adjust itself to changes in family or estate.

RULE 11. Remember that if the maker of a will changes his domicile from one state or country to another, that change may make a will, otherwise valid, wholly or partly void unless it complies with the laws of the new domicile.

RULE 12. Do not hesitate to alter your will as often as changed conditions demand, but do not attempt to do so without legal advice.

RULE 13. Remember that the expense of settling an estate is usually less under a will, if carefully drawn, than without it.

RULE 14. Do not delay in making or altering a will until you are ill or until you are about to take a journey and have little or no time to give to the proper planning and preparation of the instrument. Whatever the haste, be not in a hurry. Be deliberate but do not procrastinate.

### TRUSTS.

Trusts are a legal device by which the legal title to property is vested in one person and the beneficial interest in another. This device is used largely in wills and in certain forms of contract. The rules relating to the preparation of both instruments have already been stated and should be consulted by the reader.

The duties and the powers of the trustee are, of course, defined both by law and by the instrument creating the trust. The trustee assumes control of the property, subject to all the conditions and limitations of the trust, and he may not alter or dispense with any of them nor impose new ones. If he violates his instructions or exceeds his authority, he does so at his peril. (See rules relating to Executors, Administrators and Trustees, p. 46.)

### EXECUTORS, ADMINISTRATORS AND TRUSTEES.

In general, the duties of executors and administrators are to prove the will, if any, or take out letters of administration, make an inventory, collect assets, pay debts and divide the remainder according to the will or the law of intestacy. If the will creates a trust, the trustee must keep the principal invested and collect and pay over the income. On the termination of the trust, he must pay over the principal as by the will directed. These fiduciary relations have always been fertile in unnecessary litigation.

In the transactions of such business it is manifestly unwise for a layman to act without legal advice. In performing the duties above mentioned certain rules of business should also be followed.

RULE 1. Keep strict accounts of all money received and paid out.

RULE 2. Do not mingle estate and private funds.

RULE 3. Deposit all estate funds in a special account in a legal depository.

RULE 4. Keep estate securities and property in a safe place and entirely separate from all other property.

RULE 5. Ascertain at once what securities are legal investments and what property should be sold.

RULE 6. Keep property insured and pay taxes.

RULE 7. Be diligent in watching the valuation of investments lest they deteriorate.

RULE 8. Keep posted on the requirements of the law and carefully perform the duties of the office.

RULE 9. If in doubt as to duties consult counsel.

### GUARDIANS.

A guardian is one who legally has the care and management of the person or property, or both, of a child during minority. His office is one of trust. It is his duty to collect all moneys due the infant and to obtain possession of all his property of every description and, from a business point of view, to manage the same much as a trustee under a will.

For rules, see Executors, Administrators and Trustees, above.

### CORPORATIONS.

Corporations are artificial persons created by law for the transaction of business. Therefore, they necessarily act under laws designed to give their officers and directors power and to protect them, their stockholders and the public, in their respective rights. Large corporations habitually employ counsel in all matters requiring legal advice, but small corporations frequently fail to do so. A large part of the preventable litigation concerning corporations is directly traceable to this fact.

RULE 1. No layman should attempt to act as counsel for a corporation.

RULE 2. Corporate procedure requires competent legal oversight or periodic legal advice.

### REAL ESTATE.

The law of real estate may be said to be the backbone of American law. The estates and interests in real property, both present and future, present the most intricate of all questions known to the courts. Modern statutes and the standardization of deeds and other instruments relating to real estate have, however, greatly reduced the number of such questions; but occasionally they arise when least expected and require careful treatment.

RULE 1. Every transaction in real estate should be under the supervision of a legal adviser.

RULE 2. To safeguard the interests of the parties, the preparation of a contract for the sale of real estate often requires more care than the preparation of a deed.

RULE 3. The owner of real estate should not sign a contract of sale until he can have the assurance of counsel that he has the required title to be delivered under the contract.

RULE 4. No title can be safely accepted without a proper examination.

RULE 5. It is usually desirable to have a lease drawn or approved by counsel before signing.

## PART II.

### PREVENTION OF LITIGATION AFTER THE FACTS BECOME FIXED AND BEFORE SUIT.

After the facts upon which a dispute can be based have become fixed, either before or after a dispute has arisen, it is possible to do much to prevent litigation. What can best be done in each case and whether with or without legal advice, necessarily depends upon the facts and the parties to the prospective controversy. Differences may be minimized, adjusted or arbitrated. If not so disposed of, litigation will usually ensue.

RULE 1. In the matter of good faith give your adversary the benefit of the doubt.

RULE 2. Remember that pugnacity, vindictiveness, ill temper, impatience, carelessness, short-sightedness, arrogance, eagerness to take undue advantage and insistence on unethical principles

are all provocative of litigation. Even if these instincts are inherent in human nature they may be controlled by an impartial consideration of the facts and a proper exercise of the reasoning powers. Before rushing into litigation wise legal advice of the right sort is all important.

RULE 3. Endeavor to look at both sides of a situation in a calm and impartial manner. Eliminate all personal animosity.

RULE 4. Discuss your differences fairly, frankly, patiently, without prejudice and with due regard to the sensibilities of the other parties in interest, or employe a lawyer who will do so.

RULE 5. In such discussions with adverse parties avoid making positive assertions, even if true, which may be offensive, but rather state the same facts in a diplomatic manner not calculated unnecessarily to arouse antagonism.

RULE 6. Throw all light possible upon the questions involved in the controversy in order that nothing shall be concealed which, if known, might harmonize divergent views.

RULE 7. Display a spirit of conciliation and be prepared to make some concessions, if necessary, to avoid a breach.

RULE 8. Remember that "a lean settlement is better than a fat law suit."

RULE 9. When negotiations fail to settle a dispute submit the questions to arbitration and abide by the decision of the arbitrators.

### MINIMIZING DIFFERENCES.

It sometimes happens that, notwithstanding the die is cast that foreshadows a dispute, it is possible to pursue some course of action which will have the effect of reducing differences or damages to a minimum. Such a course must generally be promptly undertaken and may or may not require legal advice, depending upon the parties and the questions involved.

### ADJUSTMENT OF DIFFERENCES.

Differences may be adjusted by the parties themselves or with the aid of a mutual friend or their legal advisers. Which method is better depends upon the parties and the questions concerned. When questions of law are involved, the legal opinion of a lawyer acceptable to both parties is often sufficient.

### Submission of Controversy Upon Agreed Statement of Facts.

Persons of full age may submit to the court upon an agreed statement of facts any question of difference which might be the subject of an action. This should never be done without advice of counsel.

The usual difficulty with this procedure is that the parties will not agree upon the facts, thus rendering a legal or equitable action necessary.

Where the parties are able to agree, however, this method of procedure is speedy, amicable and effective, resulting in a formal judgment of the court.

### Arbitration.

Where differences cannot be adjusted between the parties or their attorneys and the intervention of a third party becomes necessary, there are several forms which arbitration may take. The arbitration may be (1) informal, (2) under the Code, (3) under the auspices of a commercial body, or (4) under the auspices of a Bar association.

The experience of many business men and lawyers testifies to the advantages of these methods of adjusting differences wherever possible. They are inexpensive, speedy and peaceful.

### Parties Who May Arbitrate.

Under the law of this state a corporation or any person of full age and sound mind may enter into arbitration.

### Disputes Which May be Arbitrated.

Under the law of this state any existing controversy may be submitted to arbitration except a claim to an estate in real property in fee or for life.

Where the sole arbitrator is a lawyer, or where the submission provides that a lawyer on the board of arbitration shall be sole judge of the law, there is no reason why substantially any question of law or fact involving property rights should not be arbitrated, provided the parties interested are of full age and sound mind. In arbitrations involving technical questions, whether in law or

special lines of business, experience has shown the advantage of selecting as arbitrators persons in that particular line of business or otherwise familiar with the trade customs or technicalities involved.

The following are peculiarly appropriate subjects for arbitration: Disputes concerning contracts, wills, mechanics' liens, insurance policies, sale and delivery of goods, partnerships, commissions, value of services, and particularly disputes arising out of business transactions in foreign countries, etc.

### Informal Arbitration.

Informal arbitration is simply the submission of a controversy to a third party without formality with an understanding to abide by the decision. Such third party may be a business man or a lawyer whose legal opinion is acceptable to both. This method is often very effective when the controversy is one that can be settled out of court.

### Arbitration Under the Code.

The Code provides a complete system for the arbitration of differences before one or more arbitrators to be selected by the parties. A written submission to arbitration is required and, at the option of the parties, it may provide for a judgment of the court to be entered on the award.

### Arbitration Under the Auspices of Commercial Bodies.

The New York Chamber of Commerce and many other commercial bodies have provided systems of arbitration not only for the use of their own members but also for non-members whether citizens of this or any foreign country. They maintain committees of arbitration to supervise such matters.

### Arbitration Under the Auspices of the New York State Bar Association.

Following the example of commercial bodies, the New York State Bar Association has established under its auspices a system of arbitration which it deems practicable for lawyers to recommend to clients wishing to settle their disputes by arbitration.

With one or more lawyers sitting in each case, arbitrators are enabled to pass upon questions of law as well as questions of fact.

## Part III.

### PREVENTION OF LITIGATION AFTER SUIT.

After a suit has been commenced, the parties should leave its management and all negotiations relating to the conduct or settlement thereof in the hands of their respective counsel.

The Chamber of Commerce of the State of New York and the New York State Bar Association, with a view to the prevention of unnecessary litigation after suit, urge upon members of the Bar that they make effort, even after litigation has begun, to bring about an amicable adjustment of differences; or, where this is impossible, to reduce disputed facts and disputed questions of law to a minimum. The Chamber and the Bar Association recommend that, in arranging for conferences, members of the Bar call attention to this recommendation as the opinion of public bodies submitted for the guidance of parties involved in litigation.

It would seem to be within the power of counsel in most cases to bring the parties together, if not upon terms of settlement, at least upon facts which should not necessarily occupy the time of the court. To that end parties and counsel are urged to encourage agreements and stipulations concerning the facts wherever possible.

In this connection a perusal of the rules under Part II (p. 47, above) is commended to all parties in interest.

CHAMBER OF COMMERCE,
COMMITTEE ON ARBITRATION.

CHARLES L. BERNHEIMER, *Chairman*,
CHARLES D. HILLES,
GEORGE B. HODGMAN,
FRANK A. FERRIS,
VICTOR KOECHL,
GEORGE A. ZABRISKIE,
THOMAS F. VIETOR.

N. Y. STATE BAR ASSOCIATION,
COMMITTEE ON PREVENTION
OF
UNNECESSARY LITIGATION.

DANIEL S. REMSEN, *Chairman*,
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## VII.

## EXTORTIONATE FEES.

**Extract from the Address of**
**PRESIDENT STILES W. BURR**
**At the Meeting of the Minnesota State Bar Association, August 8, 9, 10, 1916.**

Before leaving the subject altogether, let us pause for a word regarding one problem with which the Ethics Committee has frequently to deal. Some of the bitterest complaints against lawyers, individually and professionally, grow out of exactions in the way of fees. We are often told that "a laborer is worthy of his hire," and none should grudge a lawyer a just and reasonable compensation for his work. And as a great part of the work of a lawyer is such that the value of his services cannot be determined by any fixed or accepted standard, the question of what is a reasonable fee is often, within certain limits, a matter of opinion upon which fair-minded men may differ. There are many factors that enter into the question; the difficulty of the task, the amount at stake, the responsibility assumed, the standing, ability and reputation of the lawyer employed, the degree of skill required, and the result achieved, are all elements more or less to be considered. As to some classes of work, the measure of compensation is fairly well established. As to others, it is, as I say, dependent upon the circumstances of the particular case and largely a matter of individual opinion. And so, where a charge made is within the limits which may fairly be covered by an honest difference of opinion, a court or committee should never interfere, but should leave the parties to their civil remedies. But sometimes; alas, too frequently; a charge for professional services is nothing more than a cloak for extortion or robbery. It is not uncommon for fees to be exacted which are so far beyond any limit of fair compensation that it is impossible to credit the lawyer with good faith in making the charge. Such fees are generally withheld from funds passing through the lawyer's hands; but not always. Sometimes advantage is taken of the ignorance, the inexperience, the fears or the extremities of the client or members of his family, to extort

a contract for fees, absolute or contingent, which are plainly excessive and unconscionable. This most often occurs in cases involving damages for personal injury and in contests over estates and trust funds. Then again, when a weak or dishonest attorney has converted money coming into his hands and is finally brought to book, he instinctively resorts to an exaggerated claim for compensation to cover up or excuse his defalcation. One device which the Ethics Committee has encountered is the assertion of a claim for fees so large as to make resistance certain, and the use of this pretense of a disputed account as an excuse for withholding money belonging to the client.

Nothing has had a greater tendency to bring reproach upon the profession than the greed and rapacity of its predatory few, and the exaggerated ideas which men, normally honest and fair-minded, conceive as to the value of their services under the temptation of necessity or cupidity. And while we should be strong to uphold just claims for compensation, we should be equally fearless to condemn unreasonable exactions.

Here is where judges are often culpable; sometimes through reluctance to interfere boldly for the protection of the weak, and sometimes through too great complaisance in allowing excessive fees out of estates and trust funds that come under their jurisdiction. In my judgment, and in the judgment of the Ethics Committee (as I believe I am warranted in saying), there is a great need for reform in this direction. It is a reform to which we may well devote our energies in the future. And it is a reform in which the co-operation of the courts is especially needful.

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I may say in passing that my own opinion and that of many eminent lawyers with whom I have discussed the question, is that all contracts for contingent fees should be made subject to review by the court at the instance of the client; and that wherever the court shall find, upon due consideration, that a contract for contingent fees is inherently unreasonable in the light of circumstances under which it is made, the court should be empowered to set it aside and to allow such fee only as it may find to be reasonable; having in mind, of course, the fact that the fee is contingent upon success—since no one can doubt that where a lawyer's com-

pensation is by agreement made to depend upon the success of his efforts in a doubtful cause, he is entitled to a greater measure of compensation if he succeeds.

I do not mean that agreements for contingent fees should be prohibited or discouraged. This is far from my mind. In a great many cases it would be a denial of justice to a poor man to limit his opportunity to secure the best legal talent by restricting his right to contract for payment only out of the money or property recovered or preserved. I mean only that such contracts should be reasonable under the circumstances, and that the court should have power to inquire into their reasonableness and to relieve clients from unconscionable bargains, and in some degree protect them against the consequences of their own ignorance, inexperience and extremity where these conditions are taken advantage of. For the truth is that when the client is a woman, a youth or a man unversed in business, the client and the lawyer are rarely on an equal footing when they sit down to bargain in advance on the question of the lawyer's fee, especially where that fee is made contingent upon the result.

Indeed, I should myself be well content to see the law so changed that any contract for the compensation of an attorney-at-law should be subject to review by the courts within the limits indicated.

But I am aware that my views on this subject are not at this time in accord with the views of the majority. The vote at the St. Cloud meeting last year on the question of regulating contingent fees in personal injury and certain other tort cases, seemed to indicate that the Association, or at least the members present at that meeting, were opposed to such legislation. And the majority of the special committee of nine appointed to consider and formulate proposed legislation for remedying the evils attendant upon that class of business was, for varying reasons, unwilling to recommend legislation of this character. I state these views rather to put myself upon record, and to suggest a subject for future consideration and discussion, than with the hope of any present action in this direction.

## VIII.

## THE LIMITS OF EFFECTIVE LEGAL ACTION.

**An Address before the Pennsylvania Bar Association, June 27, 1916, By DEAN ROSCOE POUND, of Harvard University.**

A student of the political institutions of republican Rome is continually impelled to wonder how any people could carry on a great government under a system involving so much division of authority, so many vetoes, so many collegiate magistracies, and so complex a system of checks. In less degree as one studies the British constitution, as it was in the last century, the unwritten constitution, the government by custom and precedent, the respect for traditional lines between authorities and magistracies with large potentialities of theoretical jurisdiction, he can but wonder how an empire could be governed in such loose fashion. Even our American separation of powers and local self government as they existed in full vigor in the last century nowadays awaken similar reflections in the student of political science. And it must be noted that the Roman system was only possible among a homogeneous, law-abiding people, living a simple life, and broke down in the heterogeneous, undisciplined, luxurious world-state of the Roman empire. Likewise the British system shows signs of great strain under the unwonted conditions of the present century, and our own worked much better in rural, agricultural, pioneer America of the nineteenth century than in the urban, industrial America of today.

What is true of political institutions is no less true of legal institutions. One can but marvel how the Roman law of Cicero's time, with its crude enforcing agencies, its crude methods of reviewing decisions, its crude methods of instructing tribunals as to the law, could ever have maintained itself, much less have developed into a law of the world. It could not have done so, indeed, except among a disciplined, homogeneous people, zealous to know the law and to obey it. For when men demand little of law, and enforcement of law is but enforcement of the ethical minimum necessary for the orderly conduct of society, enforcement of law involves few difficulties. All but the inevitable anti-

social residuum can understand the simple program and obvious purposes of such a legal system, and enforcement requires nothing more than a strong and reasonably stable political organization. On the other hand, when men demand much of law, when they seek to devolve upon it the whole burden of social control, when they seek to make it do the work of the home and of the church, enforcement of law comes to involve many difficulties. Then few can comprehend the whole field of the law, nor can they do so at one glance. The purposes of the legal system are not all upon the surface, and it may be that many whose nature is by no means anti-social are out of accord with some or even with many of these purposes. Hence today, in the wake of ambitious social programs calling for more and more interference with every relation of life, dissatisfaction with law, criticism of legal and judicial institutions, and suspicion as to the purposes of the lawyer become universal.

Complaint of non-enforcement begins, indeed, in primitive law, when political authority is weak and there are persons or groups in the community too masterful for the nascent state to control effectively. This situation does not wholly disappear. Even today there are groups which at times prove able to over-awe administrative authorities and to thwart the equal administration of justice. But in general the causes of non-enforcement of law in modern times are more complex. Today, for the most part, they grow out of over-ambitious plans to regulate every phase of human action by law, they are involved in continual resort to law to supply the deficiencies of other agencies of social control, they spring from attempts to govern by means of law things which in their nature do not admit of objective treatment and external coercion.

Whatever ideas jurists may entertain as to law-making, at present the layman's philosophy of law-making is voluntaristic. The layman believes that law may be made. He believes that law is a product of the will of the law-maker. Accordingly, whenever he wills something that he would like to see enforced upon his neighbor, he essays to make law freely. We may grant that there is something to be said for the layman's views as to law-making as a needed reaction from the theories of legislative and juristic futility which prevailed in the nineteenth century. We may

grant, if you will, that jurists would do well to acquire some part of the modern faith in the efficacy of conscious effort. Very likely if the lawyer were to acquire something of the layman's voluntaristic theory of law-making, and the layman to absorb some of the lawyer's reliance upon finding law and skepticism as to making law, it might be a useful exchange. But that is another story. The point for our present purpose is that the great activity of modern legislatures has made enforcement of law an acute problem. It has compelled us to turn to all manner of new enforcing agencies, such as inspectors, boards and commissions, while at the same time putting a severe strain upon our old enforcing agencies. In the past we have been much concerned with the abstract justice of legal rules but have been concerned little or not at all as to their enforcement. Today we are almost willing to throw over our hard-won justice according to law in order to bring about speedy and vigorous application of new types of rules securing new interests. For example, modern statutes setting up public service commissions or industrial commissions very generally reject the common-law rules of evidence. Not only this but some of them, at least as interpreted, seem to require commissions to found their awards upon testimony which no common-law court would regard as a sufficient basis for judicial action. Again we are reverting in some degree to the crude methods of rough-and-ready adjustment of controversies imposed on primitive law by the desire for peace at any price. We have to go back to the tariffs of compositions in primitive codes, to such provisions of the beginnings of law as the "for every nail a shilling" of Ethelbert's dooms, to find an example of mechanical valuings in advance such as form the staple of modern Workmen's Compensation Acts. But our enforcing machinery, staggering under a heavy burden as it is, was not equal to the task of speedy ascertainment of an exact reparation in every case under a novel theory of liability. In other words, the problem how to enforce the law is closely connected with the question how far all that we style law and seek to give effect as law is capable of enforcement; and when we look into the history of the subject we soon come to see that much of this problem of enforcing law is in reality a problem of the intrinsic limitations upon effective legal action.

On other occasions I have sought to generalize certain phenomena of legal history by referring the development of law to four stages and suggesting a fifth stage as the one upon which we are now entering. The first of these stages may be called primitive law. In this stage the religious, the moral and the legal are undifferentiated. Law plays a minor part in social control, seeking only to keep the peace by affording some peaceable substitute for private war. In this stage the state is relatively feeble. The significant social organizations are not political. Kinship is the tie that binds and men are united by the bond of common descent rather than of territorial association. The law, seeking to keep the peace among groups of kindred, which are the units of primitive legal systems, must proceed cautiously. Just as in an industrial dispute today we seek peace at any price and resort to all manner of indirect pressure to induce the disputants to arbitrate and thus save the public peace at whatever sacrifice of justice, so primitive law proceeded indirectly to induce households and clans to arbitrate and was content if it averted private war. In the same way the arbitrators in an industrial dispute today must make a decision that will go down, and are more anxious to make concessions than to apply principles or to do even justice. Thus in primitive law the limits of effective legal action were a problem of the first importance. In common phrase, it was always a serious question how far law could "get by." Abstract justice could never be the first consideration. Instead, while law was struggling to establish itself alongside of religion and the internal discipline of the household and the clan as an agency of social control, it was first necessary to consider how far the law could interpose effectively in preventing self-help and keeping the peace. If the law sought to do too much, futile efforts at enforcement but endangered the peace which law sought to maintain at all events. Thus a great deal of primitive law is purely hortatory. Instead of commanding, it exhorts and persuades. In the Anglo-Saxon laws, the king continually calls upon his people as Christians to keep the peace better than they have been wont. Only rarely does he threaten that he and his thanes will arm and ride to the community where a strong-willed and wrong-headed group of kinsmen defy his dooms. Often the law in this stage appeals to religion, as today we appeal to the public spirit of the disputants in case of

a strike. The old Irish law could only say that if a chief allowed departure from the sound usages laid down from of old, he would bring bad weather upon his country. In the laws of Manu the threats of the law are spiritual, not temporal. Indeed outlawry, the first great weapon of the law, was borrowed from the armory of religion, where it bore the name of excommunication.

A second stage of legal development may be called the strict law. In this stage law has definitely prevailed as the everyday regulative agency in society. Moreover, it has gone beyond the primitive idea of keeping the peace at any cost and seeks to do justice by affording remedies to those who have suffered injury. But fear of arbitrary exercise of the power of granting and applying these remedies produces a system of strict law. The ends sought are certainty and uniformity in the decision of controversies and these ends are attained through rule and form. The cases in which the tribunal will interfere and the way in which it will interfere are defined in an utterly hard and fast manner. The rules are wholly inflexible. In this stage law and morals are sharply differentiated. The law regards nothing but conformity or want of conformity to its rules; the moral aspect of a situation, the moral aspect of conduct, are thought to be indifferent. Such was the *jus strictum* of the Roman republic, and such was the common law before the rise of the Court of Chancery. This stage of legal development raises no problems of enforcement of law. It requires no consideration of the limits of effective legal action. The law does not attempt to cover the whole field of human relations and of human conduct. It is content to deal with direct and forcible interference with interests of personality, with direct interference with property and possession, and with enforcement of a few of the staple transactions of economic life, when entered into in solemn form. Here the exigencies of rule and form alone prescribe limits. The neglect of enforcement of law, as a fundamental problem of legal science, is largely to be traced to the circumstance that our classical legal writings in all systems take their ideas of law from this stage.

In a third stage of legal development, represented at Rome by the classical period (from Augustus to the third century), in our law by the rise of the Court of Chancery and establishment of equity, and in the civil law by the modernizing of the Roman law

under the theory of a law of nature in the seventeenth and eighteenth centuries, there is an infusion into the law of purely moral ideas from without. At Rome the Stoic philosophy, in England the ethical ideas of chancellors who were not common-law lawyers, in Continental Europe the philosophical ideas of political and juristic writers upon the law of nature were resorted to as liberalizing agencies, so that duty was put in place of remedy, reason was relied upon rather than strict rule, and attempt was made to identify the legal with the moral. In this stage the individual human being, as the moral unit, becomes also the legal unit. In all legal systems its distinguishing characteristic is the idea that the legal must be made to coincide at every point with the moral—that a moral principle simply as such and for that reason is to be also a legal rule. Thus, in a well-known case in the Year Books, when counsel argued to the chancellor that some things were for the law, and for some there was a subpœna in chancery, and some other things were but between a man and his confessor, the archbishop who presided over the tribunal thought it conclusive to answer that the law of his court was in no wise different from the law of God. The pronouncement of the chancellor in this case is worth quoting *in extenso:*

"Sir, I know that every law is or ought to be according to the law of God; and the law of God is that an executor who is evilly disposed shall not waste all the goods, etc. And I know well that if he do so and make not amends if he have the power *il sera damné* in hell." And as the most feasible substitute for the condemnation prescribed by the law of God the chancellor sent the defaulting executor to an English jail.

Questions of the limits of effective legal action become important once more when the legal system enters upon this stage of the infusion of morals. For in the attempt to treat the moral as legal simply because it is moral, the law ambitiously seeks to deal with the whole field of human conduct; it seeks to regulate every feature of human relations. Thus when the old Roman household had broken down and religion no longer sufficed to hold men to duties enjoined by piety and good morals, the Roman prætor sought to make legal duties out of gratitude, out of reverence for parents, and out of moral obligation toward those through whose bounty a slave had been manumitted. In the same way when the

Reformation had taken away the coercive authority of the church and had put an end to its penitential system as an everyday means of social control, the English chancellor, to use the language of Maitland, "screwed up the standard of reasonableness to what many men would regard as an unreasonable height," and exacted a degree of benevolent disinterestedness so ultra-ethical as to require the interposition of Parliament. Both Roman equity and English equity in their flowering time show this tendency to be ethical at the expense of what is practicable; to make over bargains to fit the views of the tribunal as to how they should have been made; to be officiously kind, as Lord Justice James put it, in carrying out what the tribunal thought was good for the parties, even if they had not done it themselves; to make their action depend on the ethical features of the complainant's conduct rather than the legal right of the complainant or the wrong done by his adversary.

Gradually the attempt to make law coincide with morals, to enforce over-high ethical standards and to make legal duties out of moral duties which are not sufficiently tangible to be made effective by legal means, remedied itself. Men soon perceived that it gave too wide a scope to magisterial discretion. For while legal rules are of general and absolute application, moral principles must be applied with reference to circumstances and individuals. Hence at first in this stage the administration of justice was too personal and therefore too uncertain. This overwide magisterial discretion was corrected by a gradual fixing of rules and consequent stiffening of the legal system. Some moral principles, in their acquired character of legal principles, were carried out to logical consequences beyond what was practicable or expedient, so that a selecting and restricting process became necessary and at length the principles became lost in a mass of somewhat arbitrary rules derived therefrom. Others were developed as mere abstractions, and thus were deprived of their purely moral character. In this way transition took place to the next stage. But note a significant feature of this transition. The tribunal no longer tells us that its law is not other than the law of God. It no longer seeks to add legal sanction to the whole body of moral principles simply because they are moral. The legal field has again become a limited one, defined by rules, not an unlimited one

capable of indefinite extension to cover all things within the reach of the moral zeal of the magistrate.

We may call the fourth stage of legal development, which results from reaction from the identification of law and morals, the maturity of law. In this stage, which is represented in both the great legal systems of the world by the nineteenth century, equality and security are the watchwords. To insure equality, the maturity of law insists upon certainty and consequently upon rules. To insure security, it insists upon property and contract as fundamental ideas. Thus in some measure it reverts to the methods of the strict law. What the latter sought through a system of remedies it seeks through a system of individual rights. Where the former sought to achieve certainty through inflexible rules, it seeks the same end through logical reasoning from fixed conceptions. In this stage also, as in the stage of the strict law, there is no need to trouble about the limits of effective legal action. Once more the law has a definite program, namely, to secure certain fundamental individual interests by delimiting them and enforcing legal rights coincident with the interests so recognized and delimited; and it is quite content to leave all other aspects of human conduct and all other human relations to such extra-legal agencies of social control as may be adapted to deal with them.

Hence, in the nineteenth-century period of maturity and stability, all jurists agreed in ignoring questions of enforcement. The analytical school, regarding law as the command of the sovereign, conceived that enforcement was no concern of the jurist. If law was not enforced, it meant simply that the executive machinery was at fault. The historical school, thinking of law as an expression of the experience of a people in administering justice or as an unfolding in that experience of a metaphysical principle of justice, likewise held all questions of enforcement to be irrelevant. For the very existence of a rule of the common law showed that it was efficacious, and as to legislation, the historical jurist conceived that it attempted to make what could only be found, and hence was futile anyway. To the philosophical school there was but one question, namely, was the rule of law abstractly just? If so, they conceived it had a sufficient basis in its inherent justice and that the appeal to the conscience made by its accord with abstract and ideal justice must insure its efficacy in practice.

Such ideas persisting into a period of legal expansion and copious law-making have much to do with the divergence between the law in the books and the law in action which is so marked in this country today.

I have already suggested that the maturity of law has much in common with the stage of the strict law. In consequence a certain opposition between law and morals develops once more, and just as the neglect of the moral aspects of conduct in the stage of strict law required the legal revolution, through infusion of lay moral ideas into law, which we call the stage of equity or natural law, so the neglect of the moral worth of the individual and of his claim to a complete moral and social life, involved in the insistence upon property and contract in the maturity of law, are requiring a similar revolution through the absorption into the law of ideas developed in the social sciences. Thus, as the strict law and the maturity of law are comparable in many ways, so the stage of equity or natural law and the stage of legal development upon which we are entering have much in common. Compare, for example, the legislative limitations upon freedom of contract which are becoming so common today, with the limitations imposed upon contract by the chancellor. The common law enforced a penal bond, the chancellor enjoined enforcement beyond the actual damage. The common law enforced the condition of a mortgage according to the agreement of the parties; the chancellor allowed redemption after the condition had become absolute. The common law allowed men of full age and capacity to make their own bargains; the chancellor would not suffer a debtor to clog his equity of redemption and made over bargains for impecunious heirs and reversioners. Thus equity insisted on moral conduct on the part of creditors and lenders. Today we insist on social conduct on the part of owners and employers. But this is only another way of putting the same thing. For a season society extends to certain classes a protection against themselves in order to secure the social interest in the full moral and social life of every individual. Again, just as equity restrained the unconscientious exercise of legal rights and legal powers, the legislation of today is limiting the power of an owner to dispose of his property, in order to secure the interests of those who are dependent upon him. The power of the legal owner of the family home was

first to be restricted. But today more than one jurisdiction restricts the power of the husband to mortgage the household furniture bought with his own money and legally his, or to assign his own wages, earned by his own toil. Again the present, like the stage of equity or natural law, is, in comparison with the maturity of law and the strict law, a period of reversion to lawless justice. The certainty of law, of which we were so confident in the last century, is no longer assured. Many parts of the law are in a state of flux. Experiments of all sorts are in the air, and all manner of administrative tribunals, proceeding summarily upon principles yet to be defined are acquiring jurisdiction at the expense of the courts. The rising Court of Chancery, the King's Council, the Star Chamber, the Court of Requests, and all the administrative organs of justice in Tudor and Stuart England, have their analogies in twentieth century America. The sixteenth century serjeant at law who complained that the chancellor set aside the law of the King's Court because he was not acquainted with the common law, neither with the goodness thereof, would sympathize with complaints that may be heard at the meeting of any state bar association today.

Thus once more the law has an ambitious program of covering the whole range of human relations. Once more we have faith in the efficacy of effort to do things by law. As the chancellor would have the law of his court in no wise different from the law of God, and hence sought to make all moral duties into legal duties, so today the law-maker would protect all the wider human interests which are clamoring for recognition by putting legal rules behind them and would enact into law everything which an enlightened social program indicates as a desirable ideal. Accordingly, we begin to hear complaint that laws are not enforced and the forgotten problem of the limitations upon effective legal action once more becomes acute. Complaint of non-enforcement of law is nothing new. It is as old as the law and has been heard in this country from the beginning. But it is significant that in America such complaint has been heard chiefly in connection with the extravagant translations of Puritanical ideas of conduct into penal codes, known as blue laws, and the voluminous social legislation of today. It is significant also that the world over such complaint has been heard chiefly in periods when the law was

seeking ambitiously to cover the whole field of social control, or in transitions to such periods. It is not an accident that the problem of application and enforcement of law has come to be regarded as the central one in the legal science of Continental Europe. If Anglo-American jurists are still thrashing the old straw of disputes as to the nature of law we must not be deceived. Those who must keep their eyes upon the law in action are discussing application and enforcement no less than the jurists of Europe. Such non-legal volumes as the proceedings of the Association for Labor Legislation and of the National Conference of Charities and Corrections tell the true tale of the significant question for the legal science of today. It is not a mere academic exercise therefore to set forth analytically the limitations inherent in administration of justice according to law, which preclude the complete securing through law of all interests which ethical considerations or social ideals indicate as proper to be secured.

One set of limitations grows out of the difficulties involved in ascertainment of the facts to which legal rules are to be applied. This is one of the oldest and most stubborn problems of the administration of justice. In primitive law there was the danger that debate over the facts would take the form of the very private war which the law was seeking to put down. Hence the law sought to settle the facts by some mechanical device—by ordeal, or casting lots, or even battle by champions—in other words, by some conclusive test that involved no element of personal judgment on the part of the magistrate and could not be challenged for partiality. The strict law relied on procedural forms for the same reason. Forms prevented dispute. The form was fixed and notorious. Men's ideas might differ as to whether there was something novel, called a substantial right, contained in or behind the form, and if so, as to what it was. But the form allowed no scope for such disputes, and in the beginnings of a legal system as well as in the primitive stage, a chief end is to avoid dispute. In any age or in any place where men are inclined on slight provocation to take the righting of wrongs into their own hands, the law that hesitates is lost. In time the legal system develops a rational mode of trial. Yet trial by jury was at first purely mechanical. And while we should not agree with the Year Books speaking from the days of verdicts on the common knowledge of

the vicinage that a man's intent or a woman's age cannot be ascertained by legal trial, the exigencies of trial by jury impose many limitations upon legal securing of important interests. For example, the law is often criticised because it does not protect against purely subjective mental suffering, except as it accompanies or is incident to some other form of injury and within disputed limits even then. There are obvious difficulties of proof in such cases. False testimony as to mental suffering may be adduced easily and is very hard to detect. Hence the courts, constrained by the practical problem of proof to fall short of the requirements of the logical system of rights of personality, have looked to see whether there has been some bodily impact or some wrong infringing some other interest which is objectively demonstrable, and have put nervous injuries which leave no bodily record and purely mental injuries in the same category.

Another set of limitations grows out of the intangibleness of duties which morally are of great moment but legally defy enforcement. I have spoken already of futile attempts of equity at Rome and in England to make moral duties of gratitude or disinterestedness into duties enforceable by courts. In modern law not only duties of care for the health, morals and education of children, but even truancy and incorrigibility are coming under the supervision of juvenile courts or courts of domestic relations. But note that the moment these things are committed to courts administrative agencies have to be invoked to make the legal treatment effective. Probation officers, boards of children's guardians and like institutions at once develop. Moreover, one may venture to doubt whether such institutions or any that may grow out of them will ever take the place of the old-time interview between father and son in the family woodshed by means of which the intangible duties involved in that relation were formerly enforced.

A third set of limitations grows out of the subtlety of modes of seriously infringing important interests which the law would be glad to secure effectively if it might. Thus grave infringements of individual interests in the domestic relations by talebearing or intrigue are often too intangible to be reached by legal machinery. Our law has struggled hard with this difficulty. But the result of our action on the case for criminal conversation and

alienation of affections, which long ago excited the ridicule of Thackeray, do not inspire confidence nor does the sole American precedent for enjoining a defendant from flirting with the plaintiff's wife assure a better remedy. So also with the so-called right of privacy. The difficulties involved in tracing injuries to their source and in fitting cause to effect compels some sacrifice of the interests of the retiring and the sensitive.

A fourth set of limitations grows out of the inapplicability of legal machinery of rule and remedy to many phases of human conduct, to many important human relations and to some serious wrongs. One example may be seen in the duty of husband and wife to live together and the claim of each to the society and affection of the other. Formerly, so far as the husband was concerned, our legal system secured this interest in three ways, namely, by a marital privilege of restraint and correction, by a suit for restitution of conjugal rights, and by a writ of *habeas corpus* directed to one who harbored the wife apart from her husband. But the privilege of restraint and correction is incompatible with the individual interests of personality of the wife and is no longer recognized. The suit for restitution of conjugal rights, in origin an ecclesiastical institution for the correction of morals, sanctioned by excommunication, has long been practically inefficacious and is now obsolete. And the writ of *habeas corpus* may now be used only when the wife is detained from the husband against her will. Today this interest has no sanction beyond morals and the opinion of the community. This was true also in the classical Roman law, and in modern countries ruled by the Roman law, as in those that are ruled by the common law, the chief security for the interest of husband and wife in the marital relation is simply the moral sense of the community. So little has been achieved in practice by the husband's actions against third parties who infringe this interest, tested in the law by centuries of experience, that the courts have instinctively proceeded with caution in giving them to the wife by analogy in order to make the law logically complete.

Law secures interests by punishment, by prevention, by specific redress and by substitutional redress; and the wit of man has discovered no further possibilities of judicial action. But punishment has of necessity a very limited field, and today is found

applicable only to enforce absolute duties imposed to secure general social interests. The scope of preventive relief is necessarily narrow. In the case of injuries to reputation, injuries to the feelings and sensibilities—to the "peace and comfort of one's thoughts and emotions"—the wrong is ordinarily complete before any preventive remedy may be invoked, even if other difficulties were not involved. Specific redress is only possible in case of possessory rights and of certain acts involving purely economic advantages. A court can repossess a plaintiff of Blackacre, but it cannot repossess him of his reputation. It can make a defendant restore a unique chattel, but it cannot compel him to restore the alienated affections of a wife. It can constrain a defendant to perform a contract to convey land, but it cannot constrain him to restore the peace of mind of one whose privacy has been grossly invaded. Hence, in the great majority of cases substitutional redress by way of money damages is the only resource, and this has been the staple remedy of the law at all times. But this remedy is palpably inadequate except where interests of substance are involved. The value of a chattel, the value of a commercial contract, the value of use and occupation of land—such things may be measured in money. On the other hand, attempt to reach a definite measure of actual money compensation for a broken limb is at least difficult; and valuation of the feelings, the honor, the dignity of an injured person is downright impossible. We try to hide the difficulty by treating the individual honor, dignity, character and reputation, for purposes of law of defamation, as assets, and Kipling has told us what the Oriental thinks of the result. "Is a man sad? Give him money, say the Sahibs. Is he dishonored? Give him money, say the Sahibs. Hath he a wrong upon his head? Give him money, say the Sahibs." It is obvious that the Oriental's point is well taken. But it is not so obvious what else the law may do. If, therefore, the law secures property and contract more elaborately and more adequately than it secures personality, it is not because the law rates the latter less highly than the former, but because legal machinery is intrinsically well adapted to securing the one and intrinsically ill adapted to securing the other.

Finally, a fifth set of limitations grows out of the necessity of appealing to individuals to set the law in motion. All legal

systems labor under this necessity. But it puts a special burden upon legal administration of justice in an Anglo-American democracy. For our whole traditional polity depends on individual initiative to secure legal redress and enforce legal rules. It is true, the ultra individualism of the common law in this connection has broken down. We no longer rely wholly upon individual prosecutors to bring criminals to justice. We no longer rely upon private actions for damages to hold public service companies to their duties or to save us from adulterated food. Yet the possibilities of administrative enforcement of law are limited also, even if there were not grave objections to a general régime of administrative enforcement. For laws will not enforce themselves. Human beings must execute them, and there must be some motive setting the individual in motion to do this above and beyond the abstract content of the rule and its conformity to an ideal justice or an ideal of social interest. The Puritan conceived of laws simply as guides to the individual conscience. The individual will was not to be coerced. Every man's conscience was to be the ultimate arbiter of what was right and wrong at the crisis of action. But as all men's consciences were not enlightened, laws were proper to set men to thinking, to declare to them what their fellows thought on this point and that, and to afford guides to those whose consciences did not speak with assurance. Such a conception, suitable enough in a sparsely settled community of pioneers, is quite impossible in the crowded industrial community of today with its complex organization and clash of conflicting interests. Yet many still think of law after the Puritan fashion. One social reformer told us recently that the real function of law is to register the protest of society against wrong. Well, protests of society against wrong are no mean thing. But one may feel that a prophet rather than a law-maker is the proper mouthpiece for the purpose. It is said that Hunt, the agitator, appeared on one occasion before Lord Ellenborough at circuit, *a propos* of nothing upon the calendar, to make one of his harangues. After the Chief Justice had explained to him that he was not in a tribunal of general jurisdiction to inquire into every species of wrong throughout the kingdom, but only in a court of assize and jail delivery to deliver the jail of that particular county, Hunt exclaimed, "But, my Lord, I desire to protest." "Oh, certainly,"

said Lord Ellenborough. "By all means. Usher! Take Mr. Hunt into the corridor and allow him to protest as much as he pleases." Our statute books are full ot protests of society against wrong which are as efficacious for practical purposes as the declamations of Mr. Hunt in the corridor of Lord Ellenborough's court.

Much advance has been making of late in the art of drafting legislation and in the study of comparative legislation. But in an age of legislative law-making much more is required. The life of law is in its enforcement. The common-law rule came into being through enforcement and application and the situations that brought about its existence determines its life. The statutory rule, on the other hand, is made *a priori*. It is not necessarily a living rule when it is put upon the books. Occasion to apply it judicially may not arise till long afterward. Moreover it is an abstract rule and the situation that led to its existence goes rather to its interpretation than to its validity as a rule. Hence it is not enough for the law-maker to study the form of the rule and the abstract justice of its content. He must study how far cases under the rule are susceptible of proof. He must study how far by means of his rule he may set up a tangible legal duty capable of enforcement objectively by legal sanctions. He must consider how far infringements of his rule will take on a palpable shape with which the law may deal effectively. He must study how far the legal machinery of rule and remedy is adapted to effect what he desires. Last, and most of all, he must study how to insure that someone will have a motive for invoking the machinery of the law to enforce his rule in the face of the opposing interests of others in infringing it.

## IX.

## ORGANIZATION AND WORK OF THE BUREAU OF COMPARATIVE LAW.

The place of the former Annual Bulletin of the Bureau of Comparative Law has been taken by this JOURNAL.

The objects of the Bureau continue as heretofore. They include the translation into English of foreign laws, the preparation of bibliographies in its special field, and the consideration of foreign legislation and jurisprudence with a view to present information and materials of value to lawyers, law teachers and law students.

All members of the American Bar Association and of the Bureau of Comparative Law receive the AMERICAN BAR ASSOCIATION JOURNAL every quarter.

All members of the Association are by that fact also members of the Bureau. Any state Bar association can become a member on payment of $15 annually, and will then be entitled to send three delegates to the annual meeting of the Bureau and to receive five copies of the AMERICAN BAR ASSOCIATION JOURNAL. Any county, city, district, or colonial Bar association, law school, law library, institution of learning or department thereof, or other organized body of a kind not above described, may become a member on payment of $6 annually, and will then be entitled to send two delegates to the annual meeting of the Bureau and to receive two copies of the JOURNAL. Any person eligible to the American Bar Association, but not a member of it, can become a member of the Bureau on payment of $3 annually, and will then receive the JOURNAL.

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Penal Code of Siam, by Tokichi Masao (18 Yale Law Journal, 85).
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Commercial Laws of the World, Am. Ed., Boston Book Co.
German Prize Code, as in force July 1, 1915; translated by C. H. Huberich and Richard King (Baker, Voorhis & Co., N. Y.).

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SEE LIST OF THE VICE-PRESIDENTS ON THE REVERSE OF TH'S PAGE.

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[OVER]

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